

H.R. 5591: Mr. TERRY and Mrs. BLACKBURN.  
H.R. 5595: Mrs. CHRISTENSEN, Mr. BRADY of Pennsylvania, Mr. BOUCHER, and Mr. GOODE.  
H.R. 5602: Mr. THOMPSON of California, Mr. BISHOP of Georgia, Mr. HOLDEN, and Mr. MOORE of Kansas.

H.R. 5603: Ms. BORDALLO and Mr. GORDON.  
H.R. 5609: Mr. SHIMKUS.  
H.R. 5613: Mr. DENT, Mr. AL GREEN of Texas, Mr. RAHALL, Mr. MCHUGH, Mr. MATHESON, Mr. SCOTT of Georgia, Ms. TSONGAS, Mr. ARCURI, Mr. KUHLMAN of New York, Mr. SKELTON, Ms. SLAUGHTER, Mr. MCNERNEY, Mr. THOMPSON of Mississippi, Mr. YARMUTH, Mr. DAVIS of Illinois, Ms. ZOE LOFGREN of California, Mr. SHERMAN, Mr. BISHOP of New York, Mrs. NAPOLITANO, and Mr. CHANDLER.

H.R. 5614: Mr. REHBERG and Mr. PAUL.  
H.R. 5626: Mr. MCGOVERN, Mr. FRANK of Massachusetts, and Mr. ELLISON.

H.R. 5635: Mr. KLINE of Minnesota.  
H.R. 5636: Mr. MCDERMOTT, Ms. JACKSON-LEE of Texas, Mr. ELLISON, Mrs. MALONEY of New York, and Mr. DAVIS of Illinois.

H.R. 5637: Ms. LEE and Mr. FILNER.  
H.R. 5640: Mr. CHABOT.  
H.R. 5645: Ms. RICHARDSON.  
H.R. 5648: Ms. HERSETH SANDLIN.  
H.R. 5656: Mr. BURGESS, Mr. CULBERSON, Mr. COLE of Oklahoma, Mr. HALL of Texas, and Mr. BROUN of Georgia.

H.R. 5662: Mr. HINOJOSA.  
H.R. 5668: Mr. MICHAUD, Mr. SOUDER, and Ms. WATERS.

H.R. 5672: Ms. LEE.  
H.R. 5685: Mr. SCHIFF.  
H.R. 5695: Mrs. MYRICK.  
H.R. 5696: Mr. HARE.  
H.R. 5699: Mr. ROHRBACHER, Mr. ROYCE, and Mr. BLUNT.

H.R. 5700: Ms. WOOLSEY and Mr. KILDEE.  
H.R. 5710: Mrs. WILSON of New Mexico.  
H.R. 5716: Mr. STARK.  
H.R. 5721: Mrs. CUBIN.  
H.R. 5731: Mrs. BLACKBURN and Mr. CULBERSON.

H.J. Res. 12: Mr. DAVID DAVIS of Tennessee and Mrs. BLACKBURN.

H. Con. Res. 13: Mr. SPACE.  
H. Con. Res. 305: Mr. JACKSON of Illinois, Mr. CHANDLER, Mr. SESTAK, and Mr. WAXMAN.

H. Con. Res. 315: Mr. STEARNS.  
H. Con. Res. 317: Mr. BRADY of Pennsylvania, Mr. MCGOVERN, and Mr. BLUMENAUER.  
H. Con. Res. 322: Mr. ENGEL, Mr. MANZULLO, Mr. WEXLER, Mr. MACK, Mr. BURTON of Indiana, Mr. PAYNE, Mr. FORTUNO, Ms. BERKLEY, Mrs. MCCARTHY of New York, Mr. POE, Mr. BROWN of South Carolina, Ms. SCHWARTZ, Mr. TANNER, Ms. JACKSON-LEE of Texas, Mr. HENSARLING, Mr. GARRETT of New Jersey, Mr. WILSON of South Carolina, Mr. WEINER, Mr. CHABOT, Mr. KUHLMAN of New York, Mr. WAXMAN, Ms. CORRINE BROWN of Florida, Mrs. MALONEY of New York, Mr. SKELTON, Mr. NADLER, Mr. MCNULTY, Mr. LEVIN, Mrs. TAUSCHER, Mr. KLEIN of Florida, Mr. HASTINGS of Florida, Ms. SCHAKOWSKY, Mrs. DAVIS of California, Ms. TSONGAS, Ms. GIFFORDS, Mr. KAGEN, Mr. REICHERT, Mr. PORTER, Mr. AL GREEN of Texas, Mr. COHEN, Ms. MCCOLLUM of Minnesota, Ms. HARMAN, Mr. SHERMAN, Mr. HOLT, Ms. WASSERMAN SCHULTZ, Mr. VAN HOLLEN, Ms. LINDA T. SANCHEZ of California, Mr. SESTAK, Mr. LARSON of Connecticut, Mr. SCHIFF, Mr. HARE, Mr. MEEK of Florida, Mr. GENE GREEN of Texas, Mr. ROTHMAN, Mr. CUELLAR, Mr. CHANDLER, Mr. BACA, Mr. MARKEY, Mr. COSTELLO, Mr. MCCARTHY of California, Mr. BISHOP of Georgia, Mr. LANGEVIN, Mr. GALLEGLY, Mr. KING of New York, Mr. TERRY, Mr. MCHENRY, Mr. PATRICK MURPHY of Pennsylvania, Mr. BISHOP of New York, Ms. ROYBAL-ALLARD, Mr. PALLONE, Mr. MOORE of Kansas, Ms. DELAURO, Mr. LEWIS of Georgia, Mr. KNOLLENBERG, and Mr. NEUGEBAUER.

H. Res. 49: Mr. NUNES, Mr. ENGLISH of Pennsylvania, and Mr. DINGELL.

H. Res. 111: Mr. SALAZAR.

H. Res. 146: Mr. DELAHUNT.

H. Res. 424: Ms. LEE and Ms. DEGETTE.

H. Res. 653: Mr. DAVIS of Illinois and Ms. EDDIE BERNICE JOHNSON of Texas.

H. Res. 705: Mrs. MILLER of Michigan, Mr. SMITH of New Jersey, and Mr. DUNCAN.

H. Res. 758: Mr. GALLEGLY, Mr. ROGERS of Michigan, Mrs. MILLER of Michigan, and Mr. SAXTON.

H. Res. 896: Mr. PAYNE.

H. Res. 981: Mr. SENSENBRENNER, Mr. ISSA, Mr. HARE, and Ms. RICHARDSON.

H. Res. 987: Mr. BUTTERFIELD, Mr. SHULER, Ms. BALDWIN, Mr. DOYLE, Mr. GILCHREST, Mr. GENE GREEN of Texas, Ms. HARMAN, Mr. HILL, Ms. HOOLEY, Mr. MATHESON, Mr. ROSS, Ms. LINDA T. SANCHEZ of California, Ms. SCHAKOWSKY, Mr. SHIMKUS, Ms. SOLIS, and Mr. TAYLOR.

H. Res. 1008: Ms. ESHOO and Mr. MCHUGH.

H. Res. 1011: Mr. MILLER of North Carolina, Mr. JACKSON of Illinois, Mr. PLATTS, Mr. LANGEVIN, and Ms. CORRINE BROWN of Florida.

H. Res. 1022: Ms. CORRINE BROWN of Florida, Mrs. DAVIS of California, Ms. WATSON, Mr. BERMAN, Ms. PRYCE of Ohio, Mrs. NAPOLITANO, Mrs. BONO MACK, Mrs. LOWEY, Mrs. GILLIBRAND, Ms. TSONGAS, Ms. HARMAN, Ms. BERKLEY, Ms. WOOLSEY, Ms. LINDA T. SANCHEZ of California, Ms. LORETTA SANCHEZ of California, and Ms. CLARKE.

H. Res. 1026: Mr. DINGELL.

H. Res. 1048: Mr. MCNULTY.

H. Res. 1054: Mr. CARNAHAN, Ms. HIRONO, and Mr. HARE.

H. Res. 1055: Mr. PAYNE, Mr. ELLISON, and Mr. LEWIS of Georgia.

H. Res. 1063: Mr. TANNER, Mr. WHITFIELD of Kentucky, Ms. JACKSON-LEE of Texas, Mr. KLEIN of Florida, Mr. COSTA, and Mr. HINOJOSA.

H. Res. 1064: Mr. SHAYS.

H. Res. 1069: Mr. KING of New York.

H. Res. 1072: Mr. WALZ of Minnesota.

H. Res. 1073: Mr. MCDERMOTT, Mr. TOWNS, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. MEEKS of New York, Mr. CLAY, Mr. RANGEL, Mrs. JONES of Ohio, Mr. MCGOVERN, Ms. LEE, Ms. MATSUI, Mr. SARBANES, Ms. JACKSON-LEE of Texas, Mr. MCHUGH, Ms. MCCOLLUM of Minnesota, Mr. KUCINICH, Mr. SNYDER, Mr. RUSH, Mr. SMITH of Washington, Mr. FATTAH, Mr. TOM DAVIS of Virginia, Mr. MORAN of Virginia, Mr. JOHNSON of Georgia, Ms. MOORE of Wisconsin, Mr. NORTON, Mr. PAYNE, Mr. VAN HOLLEN, Mr. GRIJALVA, Mr. HINOJOSA, Mr. HASTINGS of Florida, Mr. BUTTERFIELD, Ms. WATSON, Mrs. MALONEY of New York, Mr. HOYER, Mr. SHIMKUS, Mr. GUTIERREZ, Mr. CLEAVER, Ms. SCHAKOWSKY, Mr. LYNCH, Mr. HIGGINS, Mr. COSTELLO, and Mr. LIPINSKI.

H. Res. 1079: Mr. MCCOTTER, Mr. PEARCE, Ms. PRYCE of Ohio, Ms. MOORE of Wisconsin, Ms. MCCOLLUM of Minnesota, Mr. DAVIS of Illinois, and Ms. EDDIE BERNICE JOHNSON of Texas.

H. Res. 1080: Mr. HENSARLING and Mrs. DRAKE.

H. Res. 1081: Mr. WU, Ms. WASSERMAN SCHULTZ, Ms. KILPATRICK, Mr. HILL, Ms. DELAURO, Ms. SLAUGHTER, Mr. PRICE of North Carolina, Mr. FILNER, Mr. WYNN, Mr. SCOTT of Virginia and Mr. OBERSTAR.

#### DELETION OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 7 of rule XII, sponsors were deleted from public bills and resolutions as follows:

H.R. 1665: Mr. TIM MURPHY of Pennsylvania.

#### AMENDMENTS

Under clause 8 of rule XVIII, proposed amendments were submitted as follows:

H.R. 2537

OFFERED BY: MRS. MCCARTHY OF NEW YORK  
AMENDMENT No. 3: At the end of the bill, add the following:

#### SEC. 11. PRESENCE OF PHARMACEUTICALS AND PERSONAL CARE PRODUCTS IN COASTAL RECREATION WATERS.

(a) STUDY.—The Administrator of the Environmental Protection Agency, in consultation with appropriate government agencies (including the National Institute of Environmental Health Sciences), shall conduct a study of the presence of pharmaceuticals and personal care products (in this section referred to as “PPCPs”) in coastal recreation waters.

(b) CONTENTS.—In conducting the study under subsection (a), the Administrator shall—

(1) identify PPCPs that have been detected in the waters of the United States and the levels at which such PPCPs have been detected; and

(2) identify the sources of PPCPs in the waters of the United States.

(c) EXAMINATION OF WASTEWATER EFFLUENT AND RUN-OFF FROM AGRICULTURAL PRODUCTS.—In identifying sources of PPCPs under subsection (b)(2), the Administrator shall examine wastewater effluent and run-off from agricultural products.

(d) REPORT.—Not later than one year after the date of enactment of this Act, in order to provide a better understanding of the effects of PPCPs in the waters of the United States on human health, aquatic animal health, and aquatic wildlife, the Administrator shall submit to Congress a report on the results of the study conducted under this section.

(e) PHARMACEUTICALS AND PERSONAL CARE PRODUCTS DEFINED.—In this section, the terms “pharmaceuticals and personal care products” and “PPCPs” mean products used by individuals for personal health or cosmetic reasons or used by agribusiness to enhance growth or health of livestock.

H.R. 2537

OFFERED BY: MR. FOSSELLA

AMENDMENT No. 4: Page 2, after line 2 insert the following:

#### TITLE I—BEACH PROTECTION ACT OF 2007

At the end of the bill, add the following new title:

#### TITLE II—FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978 AMENDMENTS ACT OF 2008

#### SEC. 100. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the “Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008” or the “FISA Amendments Act of 2008”.

(b) TABLE OF CONTENTS.—The table of contents for this title is as follows:

Sec. 100. Short title; table of contents.

Subtitle A—Foreign Intelligence Surveillance

Sec. 101. Additional procedures regarding certain persons outside the United States.

Sec. 102. Statement of exclusive means by which electronic surveillance and interception of domestic communications may be conducted.

Sec. 103. Submittal to Congress of certain court orders under the Foreign Intelligence Surveillance Act of 1978.

Sec. 104. Applications for court orders.

Sec. 105. Issuance of an order.

- Sec. 106. Use of information.  
 Sec. 107. Amendments for physical searches.  
 Sec. 108. Amendments for emergency pen registers and trap and trace devices.  
 Sec. 109. Foreign Intelligence Surveillance Court.  
 Sec. 110. Weapons of mass destruction.  
 Sec. 111. Technical and conforming amendments.

Subtitle B—Protections for Electronic Communication Service Providers

- Sec. 201. Definitions.  
 Sec. 202. Limitations on civil actions for electronic communication service providers.  
 Sec. 203. Procedures for implementing statutory defenses under the Foreign Intelligence Surveillance Act of 1978.  
 Sec. 204. Preemption of State investigations.  
 Sec. 205. Technical amendments.

Subtitle C—Other Provisions

- Sec. 301. Severability.  
 Sec. 302. Effective date; repeal; transition procedures.

**Subtitle A—Foreign Intelligence Surveillance**  
**SEC. 101. ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES.**

(a) IN GENERAL.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

- (1) by striking title VII; and  
 (2) by adding after title VI the following new title:

**“TITLE VII—ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES**

**“SEC. 701. LIMITATION ON DEFINITION OF ELECTRONIC SURVEILLANCE.**

“Nothing in the definition of electronic surveillance under section 101(f) shall be construed to encompass surveillance that is targeted in accordance with this title at a person reasonably believed to be located outside the United States.

**“SEC. 702. DEFINITIONS.**

“(a) IN GENERAL.—The terms ‘agent of a foreign power’, ‘Attorney General’, ‘contents’, ‘electronic surveillance’, ‘foreign intelligence information’, ‘foreign power’, ‘minimization procedures’, ‘person’, ‘United States’, and ‘United States person’ shall have the meanings given such terms in section 101, except as specifically provided in this title.

“(b) ADDITIONAL DEFINITIONS.—

“(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term ‘congressional intelligence committees’ means—

“(A) the Select Committee on Intelligence of the Senate; and

“(B) the Permanent Select Committee on Intelligence of the House of Representatives.

“(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.—The terms ‘Foreign Intelligence Surveillance Court’ and ‘Court’ mean the court established by section 103(a).

“(3) FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW; COURT OF REVIEW.—The terms ‘Foreign Intelligence Surveillance Court of Review’ and ‘Court of Review’ mean the court established by section 103(b).

“(4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term ‘electronic communication service provider’ means—

“(A) a telecommunications carrier, as that term is defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153);

“(B) a provider of electronic communication service, as that term is defined in section 2510 of title 18, United States Code;

“(C) a provider of a remote computing service, as that term is defined in section 2711 of title 18, United States Code;

“(D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored; or

“(E) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), or (D).

“(5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term ‘element of the intelligence community’ means an element of the intelligence community specified in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

**“SEC. 703. PROCEDURES FOR TARGETING CERTAIN PERSONS OUTSIDE THE UNITED STATES OTHER THAN UNITED STATES PERSONS.**

“(a) AUTHORIZATION.—Notwithstanding any other law, the Attorney General and the Director of National Intelligence may authorize jointly, for periods of up to 1 year, the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information.

“(b) LIMITATIONS.—An acquisition authorized under subsection (a)—

“(1) may not intentionally target any person known at the time of acquisition to be located in the United States;

“(2) may not intentionally target a person reasonably believed to be located outside the United States if the purpose of such acquisition is to target a particular, known person reasonably believed to be in the United States, except in accordance with title I or title III;

“(3) may not intentionally target a United States person reasonably believed to be located outside the United States, except in accordance with sections 704, 705, or 706;

“(4) shall not intentionally acquire any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States; and

“(5) shall be conducted in a manner consistent with the fourth amendment to the Constitution of the United States.

“(c) CONDUCT OF ACQUISITION.—An acquisition authorized under subsection (a) may be conducted only in accordance with—

“(1) a certification made by the Attorney General and the Director of National Intelligence pursuant to subsection (f); and

“(2) the targeting and minimization procedures required pursuant to subsections (d) and (e).

“(d) TARGETING PROCEDURES.—

“(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director of National Intelligence, shall adopt targeting procedures that are reasonably designed to ensure that any acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States and does not result in the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States.

“(2) JUDICIAL REVIEW.—The procedures referred to in paragraph (1) shall be subject to judicial review pursuant to subsection (h).

“(e) MINIMIZATION PROCEDURES.—

“(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director of National Intelligence, shall adopt minimization procedures that meet the definition of minimization procedures under section 101(h) or section 301(4) for acquisitions authorized under subsection (a).

“(2) JUDICIAL REVIEW.—The minimization procedures required by this subsection shall be subject to judicial review pursuant to subsection (h).

“(f) CERTIFICATION.—

“(1) IN GENERAL.—

“(A) REQUIREMENT.—Subject to subparagraph (B), prior to the initiation of an acquisition authorized under subsection (a), the Attorney General and the Director of National Intelligence shall provide, under oath, a written certification, as described in this subsection.

“(B) EXCEPTION.—If the Attorney General and the Director of National Intelligence determine that immediate action by the Government is required and time does not permit the preparation of a certification under this subsection prior to the initiation of an acquisition, the Attorney General and the Director of National Intelligence shall prepare such certification, including such determination, as soon as possible but in no event more than 7 days after such determination is made.

“(2) REQUIREMENTS.—A certification made under this subsection shall—

“(A) attest that—

“(i) there are reasonable procedures in place for determining that the acquisition authorized under subsection (a) is targeted at persons reasonably believed to be located outside the United States and that such procedures have been approved by, or will be submitted in not more than 5 days for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (h);

“(ii) there are reasonable procedures in place for determining that the acquisition authorized under subsection (a) does not result in the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States, and that such procedures have been approved by, or will be submitted in not more than 5 days for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (h);

“(iii) the procedures referred to in clauses (i) and (ii) are consistent with the requirements of the fourth amendment to the Constitution of the United States and do not permit the intentional targeting of any person who is known at the time of acquisition to be located in the United States or the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of acquisition to be located in the United States;

“(iv) a significant purpose of the acquisition is to obtain foreign intelligence information;

“(v) the minimization procedures to be used with respect to such acquisition—

“(I) meet the definition of minimization procedures under section 101(h) or section 301(4); and

“(II) have been approved by, or will be submitted in not more than 5 days for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (h);

“(vi) the acquisition involves obtaining the foreign intelligence information from or with the assistance of an electronic communication service provider; and

“(vii) the acquisition does not constitute electronic surveillance, as limited by section 701; and

“(B) be supported, as appropriate, by the affidavit of any appropriate official in the area of national security who is—

“(i) appointed by the President, by and with the consent of the Senate; or

“(ii) the head of any element of the intelligence community.

“(3) LIMITATION.—A certification made under this subsection is not required to identify the specific facilities, places, premises, or property at which the acquisition authorized under subsection (a) will be directed or conducted.

“(4) SUBMISSION TO THE COURT.—The Attorney General shall transmit a copy of a certification made under this subsection, and any supporting affidavit, under seal to the Foreign Intelligence Surveillance Court as soon as possible, but in no event more than 5 days after such certification is made. Such certification shall be maintained under security measures adopted by the Chief Justice of the United States and the Attorney General, in consultation with the Director of National Intelligence.

“(5) REVIEW.—The certification required by this subsection shall be subject to judicial review pursuant to subsection (h).

“(g) DIRECTIVES AND JUDICIAL REVIEW OF DIRECTIVES.—

“(1) AUTHORITY.—With respect to an acquisition authorized under subsection (a), the Attorney General and the Director of National Intelligence may direct, in writing, an electronic communication service provider to—

“(A) immediately provide the Government with all information, facilities, or assistance necessary to accomplish the acquisition in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that such electronic communication service provider is providing to the target; and

“(B) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the acquisition or the aid furnished that such electronic communication service provider wishes to maintain.

“(2) COMPENSATION.—The Government shall compensate, at the prevailing rate, an electronic communication service provider for providing information, facilities, or assistance pursuant to paragraph (1).

“(3) RELEASE FROM LIABILITY.—Notwithstanding any other law, no cause of action shall lie in any court against any electronic communication service provider for providing any information, facilities, or assistance in accordance with a directive issued pursuant to paragraph (1).

“(4) CHALLENGING OF DIRECTIVES.—

“(A) AUTHORITY TO CHALLENGE.—An electronic communication service provider receiving a directive issued pursuant to paragraph (1) may challenge the directive by filing a petition with the Foreign Intelligence Surveillance Court, which shall have jurisdiction to review such a petition.

“(B) ASSIGNMENT.—The presiding judge of the Court shall assign the petition filed under subparagraph (A) to 1 of the judges serving in the pool established by section 103(e)(1) not later than 24 hours after the filing of the petition.

“(C) STANDARDS FOR REVIEW.—A judge considering a petition to modify or set aside a directive may grant such petition only if the judge finds that the directive does not meet the requirements of this section, or is otherwise unlawful.

“(D) PROCEDURES FOR INITIAL REVIEW.—A judge shall conduct an initial review not later than 5 days after being assigned a petition described in subparagraph (C). If the judge determines that the petition consists of claims, defenses, or other legal contentions that are not warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law, the judge shall immediately deny the petition and affirm the directive or any part of the directive that is the subject of the petition and order the recipient to comply with the directive or any part of it. Upon making such a determination or promptly thereafter, the judge shall provide a written statement for the record of the reasons for a determination under this subparagraph.

“(E) PROCEDURES FOR PLENARY REVIEW.—If a judge determines that a petition described in subparagraph (C) requires plenary review, the judge shall affirm, modify, or set aside the directive that is the subject of that petition not later than 30 days after being assigned the petition, unless the judge, by order for reasons stated, extends that time as necessary to comport with the due process clause of the fifth amendment to the Constitution of the United States. Unless the judge sets aside the directive, the judge shall immediately affirm or affirm with modifications the directive, and order the recipient to comply with the directive in its entirety or as modified. The judge shall provide a written statement for the records of the reasons for a determination under this subparagraph.

“(F) CONTINUED EFFECT.—Any directive not explicitly modified or set aside under this paragraph shall remain in full effect.

“(G) CONTEMPT OF COURT.—Failure to obey an order of the Court issued under this paragraph may be punished by the Court as contempt of court.

“(5) ENFORCEMENT OF DIRECTIVES.—

“(A) ORDER TO COMPEL.—In the case of a failure to comply with a directive issued pursuant to paragraph (1), the Attorney General may file a petition for an order to compel compliance with the directive with the Foreign Intelligence Surveillance Court, which shall have jurisdiction to review such a petition.

“(B) ASSIGNMENT.—The presiding judge of the Court shall assign a petition filed under subparagraph (A) to 1 of the judges serving in the pool established by section 103(e)(1) not later than 24 hours after the filing of the petition.

“(C) STANDARDS FOR REVIEW.—A judge considering a petition filed under subparagraph (A) shall issue an order requiring the electronic communication service provider to comply with the directive or any part of it, as issued or as modified, if the judge finds that the directive meets the requirements of this section, and is otherwise lawful.

“(D) PROCEDURES FOR REVIEW.—The judge shall render a determination not later than 30 days after being assigned a petition filed under subparagraph (A), unless the judge, by order for reasons stated, extends that time if necessary to comport with the due process clause of the fifth amendment to the Constitution of the United States. The judge shall provide a written statement for the record of the reasons for a determination under this paragraph.

“(E) CONTEMPT OF COURT.—Failure to obey an order of the Court issued under this paragraph may be punished by the Court as contempt of court.

“(F) PROCESS.—Any process under this paragraph may be served in any judicial district in which the electronic communication service provider may be found.

“(6) APPEAL.—

“(A) APPEAL TO THE COURT OF REVIEW.—The Government or an electronic communication service provider receiving a directive issued pursuant to paragraph (1) may file a petition with the Foreign Intelligence Surveillance Court of Review for review of the decision issued pursuant to paragraph (4) or (5). The Court of Review shall have jurisdiction to consider such a petition and shall provide a written statement for the record of the reasons for a decision under this paragraph.

“(B) CERTIORARI TO THE SUPREME COURT.—The Government or an electronic communication service provider receiving a directive issued pursuant to paragraph (1) may file a petition for a writ of certiorari for review of the decision of the Court of Review issued under subparagraph (A). The record for such review shall be transmitted under

seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

“(h) JUDICIAL REVIEW OF CERTIFICATIONS AND PROCEDURES.—

“(1) IN GENERAL.—

“(A) REVIEW BY THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Foreign Intelligence Surveillance Court shall have jurisdiction to review any certification required by subsection (c) and the targeting and minimization procedures adopted pursuant to subsections (d) and (e).

“(B) SUBMISSION TO THE COURT.—The Attorney General shall submit to the Court any such certification or procedure, or amendment thereto, not later than 5 days after making or amending the certification or adopting or amending the procedures.

“(2) CERTIFICATIONS.—The Court shall review a certification provided under subsection (f) to determine whether the certification contains all the required elements.

“(3) TARGETING PROCEDURES.—The Court shall review the targeting procedures required by subsection (d) to assess whether the procedures are reasonably designed to ensure that the acquisition authorized under subsection (a) is limited to the targeting of persons reasonably believed to be located outside the United States and does not result in the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States.

“(4) MINIMIZATION PROCEDURES.—The Court shall review the minimization procedures required by subsection (e) to assess whether such procedures meet the definition of minimization procedures under section 101(h) or section 301(4).

“(5) ORDERS.—

“(A) APPROVAL.—If the Court finds that a certification required by subsection (f) contains all of the required elements and that the targeting and minimization procedures required by subsections (d) and (e) are consistent with the requirements of those subsections and with the fourth amendment to the Constitution of the United States, the Court shall enter an order approving the continued use of the procedures for the acquisition authorized under subsection (a).

“(B) CORRECTION OF DEFICIENCIES.—If the Court finds that a certification required by subsection (f) does not contain all of the required elements, or that the procedures required by subsections (d) and (e) are not consistent with the requirements of those subsections or the fourth amendment to the Constitution of the United States, the Court shall issue an order directing the Government to, at the Government's election and to the extent required by the Court's order—

“(i) correct any deficiency identified by the Court's order not later than 30 days after the date the Court issues the order; or

“(ii) cease the acquisition authorized under subsection (a).

“(C) REQUIREMENT FOR WRITTEN STATEMENT.—In support of its orders under this subsection, the Court shall provide, simultaneously with the orders, for the record a written statement of its reasons.

“(6) APPEAL.—

“(A) APPEAL TO THE COURT OF REVIEW.—The Government may appeal any order under this section to the Foreign Intelligence Surveillance Court of Review, which shall have jurisdiction to review such order. For any decision affirming, reversing, or modifying an order of the Foreign Intelligence Surveillance Court, the Court of Review shall provide for the record a written statement of its reasons.

“(B) CONTINUATION OF ACQUISITION PENDING REHEARING OR APPEAL.—Any acquisitions affected by an order under paragraph (5)(B) may continue—

“(i) during the pendency of any rehearing of the order by the Court en banc; and

“(ii) if the Government appeals an order under this section, until the Court of Review enters an order under subparagraph (C).

“(C) IMPLEMENTATION PENDING APPEAL.—Not later than 60 days after the filing of an appeal of an order under paragraph (5)(B) directing the correction of a deficiency, the Court of Review shall determine, and enter a corresponding order regarding, whether all or any part of the correction order, as issued or modified, shall be implemented during the pendency of the appeal.

“(D) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of a decision of the Court of Review issued under subparagraph (A). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

“(i) EXPEDITED JUDICIAL PROCEEDINGS.—Judicial proceedings under this section shall be conducted as expeditiously as possible.

“(J) MAINTENANCE AND SECURITY OF RECORDS AND PROCEEDINGS.—

“(1) STANDARDS.—A record of a proceeding under this section, including petitions filed, orders granted, and statements of reasons for decision, shall be maintained under security measures adopted by the Chief Justice of the United States, in consultation with the Attorney General and the Director of National Intelligence.

“(2) FILING AND REVIEW.—All petitions under this section shall be filed under seal. In any proceedings under this section, the court shall, upon request of the Government, review ex parte and in camera any Government submission, or portions of a submission, which may include classified information.

“(3) RETENTION OF RECORDS.—A directive made or an order granted under this section shall be retained for a period of not less than 10 years from the date on which such directive or such order is made.

“(K) ASSESSMENTS AND REVIEWS.—

“(1) SEMIANNUAL ASSESSMENT.—Not less frequently than once every 6 months, the Attorney General and Director of National Intelligence shall assess compliance with the targeting and minimization procedures required by subsections (e) and (f) and shall submit each such assessment to—

“(A) the Foreign Intelligence Surveillance Court; and

“(B) the congressional intelligence committees.

“(2) AGENCY ASSESSMENT.—The Inspectors General of the Department of Justice and of any element of the intelligence community authorized to acquire foreign intelligence information under subsection (a) with respect to their department, agency, or element—

“(A) are authorized to review the compliance with the targeting and minimization procedures required by subsections (d) and (e);

“(B) with respect to acquisitions authorized under subsection (a), shall review the number of disseminated intelligence reports containing a reference to a United States person identity and the number of United States person identities subsequently disseminated by the element concerned in response to requests for identities that were not referred to by name or title in the original reporting;

“(C) with respect to acquisitions authorized under subsection (a), shall review the number of targets that were later determined to be located in the United States

and, to the extent possible, whether their communications were reviewed; and

“(D) shall provide each such review to—

“(i) the Attorney General;

“(ii) the Director of National Intelligence; and

“(iii) the congressional intelligence committees.

“(3) ANNUAL REVIEW.—

“(A) REQUIREMENT TO CONDUCT.—The head of an element of the intelligence community conducting an acquisition authorized under subsection (a) shall direct the element to conduct an annual review to determine whether there is reason to believe that foreign intelligence information has been or will be obtained from the acquisition. The annual review shall provide, with respect to such acquisitions authorized under subsection (a)—

“(i) an accounting of the number of disseminated intelligence reports containing a reference to a United States person identity;

“(ii) an accounting of the number of United States person identities subsequently disseminated by that element in response to requests for identities that were not referred to by name or title in the original reporting;

“(iii) the number of targets that were later determined to be located in the United States and, to the extent possible, whether their communications were reviewed; and

“(iv) a description of any procedures developed by the head of an element of the intelligence community and approved by the Director of National Intelligence to assess, in a manner consistent with national security, operational requirements and the privacy interests of United States persons, the extent to which the acquisitions authorized under subsection (a) acquire the communications of United States persons, as well as the results of any such assessment.

“(B) USE OF REVIEW.—The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall use each such review to evaluate the adequacy of the minimization procedures utilized by such element or the application of the minimization procedures to a particular acquisition authorized under subsection (a).

“(C) PROVISION OF REVIEW.—The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall provide such review to—

“(i) the Foreign Intelligence Surveillance Court;

“(ii) the Attorney General;

“(iii) the Director of National Intelligence; and

“(iv) the congressional intelligence committees.

#### **“SEC. 704. CERTAIN ACQUISITIONS INSIDE THE UNITED STATES OF UNITED STATES PERSONS OUTSIDE THE UNITED STATES.**

“(a) JURISDICTION OF THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—

“(1) IN GENERAL.—The Foreign Intelligence Surveillance Court shall have jurisdiction to enter an order approving the targeting of a United States person reasonably believed to be located outside the United States to acquire foreign intelligence information, if such acquisition constitutes electronic surveillance (as defined in section 101(f), regardless of the limitation of section 701) or the acquisition of stored electronic communications or stored electronic data that requires an order under this Act, and such acquisition is conducted within the United States.

“(2) LIMITATION.—In the event that a United States person targeted under this subsection is reasonably believed to be located in the United States during the pendency of an order issued pursuant to subsection (c), such acquisition shall cease until

authority, other than under this section, is obtained pursuant to this Act or the targeted United States person is again reasonably believed to be located outside the United States during the pendency of an order issued pursuant to subsection (c).

“(b) APPLICATION.—

“(1) IN GENERAL.—Each application for an order under this section shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1). Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfies the criteria and requirements of such application, as set forth in this section, and shall include—

“(A) the identity of the Federal officer making the application;

“(B) the identity, if known, or a description of the United States person who is the target of the acquisition;

“(C) a statement of the facts and circumstances relied upon to justify the applicant's belief that the United States person who is the target of the acquisition is—

“(i) a person reasonably believed to be located outside the United States; and

“(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

“(D) a statement of the proposed minimization procedures that meet the definition of minimization procedures under section 101(h) or section 301(4);

“(E) a description of the nature of the information sought and the type of communications or activities to be subjected to acquisition;

“(F) a certification made by the Attorney General or an official specified in section 104(a)(6) that—

“(i) the certifying official deems the information sought to be foreign intelligence information;

“(ii) a significant purpose of the acquisition is to obtain foreign intelligence information;

“(iii) such information cannot reasonably be obtained by normal investigative techniques;

“(iv) designates the type of foreign intelligence information being sought according to the categories described in section 101(e); and

“(v) includes a statement of the basis for the certification that—

“(I) the information sought is the type of foreign intelligence information designated; and

“(II) such information cannot reasonably be obtained by normal investigative techniques;

“(G) a summary statement of the means by which the acquisition will be conducted and whether physical entry is required to effect the acquisition;

“(H) the identity of any electronic communication service provider necessary to effect the acquisition, provided, however, that the application is not required to identify the specific facilities, places, premises, or property at which the acquisition authorized under this section will be directed or conducted;

“(I) a statement of the facts concerning any previous applications that have been made to any judge of the Foreign Intelligence Surveillance Court involving the United States person specified in the application and the action taken on each previous application; and

“(J) a statement of the period of time for which the acquisition is required to be maintained, provided that such period of time shall not exceed 90 days per application.

“(2) OTHER REQUIREMENTS OF THE ATTORNEY GENERAL.—The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

“(3) OTHER REQUIREMENTS OF THE JUDGE.—The judge may require the applicant to furnish such other information as may be necessary to make the findings required by subsection (c)(1).

“(c) ORDER.—

“(1) FINDINGS.—Upon an application made pursuant to subsection (b), the Foreign Intelligence Surveillance Court shall enter an ex parte order as requested or as modified approving the acquisition if the Court finds that—

“(A) the application has been made by a Federal officer and approved by the Attorney General;

“(B) on the basis of the facts submitted by the applicant, for the United States person who is the target of the acquisition, there is probable cause to believe that the target is—

“(i) a person reasonably believed to be located outside the United States; and

“(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

“(C) the proposed minimization procedures meet the definition of minimization procedures under section 101(h) or section 301(4); and

“(D) the application which has been filed contains all statements and certifications required by subsection (b) and the certification or certifications are not clearly erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and any other information furnished under subsection (b)(3).

“(2) PROBABLE CAUSE.—In determining whether or not probable cause exists for purposes of an order under paragraph (1), a judge having jurisdiction under subsection (a)(1) may consider past activities of the target, as well as facts and circumstances relating to current or future activities of the target. However, no United States person may be considered a foreign power, agent of a foreign power, or officer or employee of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

“(3) REVIEW.—

“(A) LIMITATION ON REVIEW.—Review by a judge having jurisdiction under subsection (a)(1) shall be limited to that required to make the findings described in paragraph (1).

“(B) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted under subsection (b) are insufficient to establish probable cause to issue an order under paragraph (1), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (f).

“(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the proposed minimization procedures required under paragraph (1)(C) do not meet the definition of minimization procedures under section 101(h) or section 301(4), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (f).

“(D) REVIEW OF CERTIFICATION.—If the judge determines that an application required by subsection (b) does not contain all of the required elements, or that the certification or certifications are clearly erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and any other information furnished under subsection (b)(3), the

judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (f).

“(4) SPECIFICATIONS.—An order approving an acquisition under this subsection shall specify—

“(A) the identity, if known, or a description of the United States person who is the target of the acquisition identified or described in the application pursuant to subsection (b)(1)(B);

“(B) if provided in the application pursuant to subsection (b)(1)(H), the nature and location of each of the facilities or places at which the acquisition will be directed;

“(C) the nature of the information sought to be acquired and the type of communications or activities to be subjected to acquisition;

“(D) the means by which the acquisition will be conducted and whether physical entry is required to effect the acquisition; and

“(E) the period of time during which the acquisition is approved.

“(5) DIRECTIONS.—An order approving acquisitions under this subsection shall direct—

“(A) that the minimization procedures be followed;

“(B) an electronic communication service provider to provide to the Government forthwith all information, facilities, or assistance necessary to accomplish the acquisition authorized under this subsection in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that such electronic communication service provider is providing to the target;

“(C) an electronic communication service provider to maintain under security procedures approved by the Attorney General any records concerning the acquisition or the aid furnished that such electronic communication service provider wishes to maintain; and

“(D) that the Government compensate, at the prevailing rate, such electronic communication service provider for providing such information, facilities, or assistance.

“(6) DURATION.—An order approved under this paragraph shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

“(7) COMPLIANCE.—At or prior to the end of the period of time for which an acquisition is approved by an order or extension under this section, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

“(d) EMERGENCY AUTHORIZATION.—

“(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other provision of this Act, if the Attorney General reasonably determines that—

“(A) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subsection (c) before an order authorizing such acquisition can with due diligence be obtained, and

“(B) the factual basis for issuance of an order under this subsection to approve such acquisition exists,

the Attorney General may authorize the emergency acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General, or a designee of the Attorney General, at the time of such authorization that the decision has been made to conduct such acquisition and if an appli-

cation in accordance with this subsection is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days after the Attorney General authorizes such acquisition.

“(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes such emergency acquisition, the Attorney General shall require that the minimization procedures required by this section for the issuance of a judicial order be followed.

“(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of a judicial order approving such acquisition, the acquisition shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

“(4) USE OF INFORMATION.—In the event that such application for approval is denied, or in any other case where the acquisition is terminated and no order is issued approving the acquisition, no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person during the pendency of the 7-day emergency acquisition period, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

“(e) RELEASE FROM LIABILITY.—Notwithstanding any other law, no cause of action shall lie in any court against any electronic communication service provider for providing any information, facilities, or assistance in accordance with an order or request for emergency assistance issued pursuant to subsections (c) or (d).

“(f) APPEAL.—

“(1) APPEAL TO THE FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.—The Government may file an appeal with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to consider such appeal and shall provide a written statement for the record of the reasons for a decision under this paragraph.

“(2) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of the decision of the Court of Review issued under paragraph (1). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

#### **“SEC. 705. OTHER ACQUISITIONS TARGETING UNITED STATES PERSONS OUTSIDE THE UNITED STATES.**

“(a) JURISDICTION AND SCOPE.—

“(1) JURISDICTION.—The Foreign Intelligence Surveillance Court shall have jurisdiction to enter an order pursuant to subsection (c).

“(2) SCOPE.—No element of the intelligence community may intentionally target, for the purpose of acquiring foreign intelligence information, a United States person reasonably believed to be located outside the United States under circumstances in which the targeted United States person has a reasonable expectation of privacy and a warrant would be required if the acquisition were

conducted inside the United States for law enforcement purposes, unless a judge of the Foreign Intelligence Surveillance Court has entered an order or the Attorney General has authorized an emergency acquisition pursuant to subsections (c) or (d) or any other provision of this Act.

“(3) LIMITATIONS.—

“(A) MOVING OR MISIDENTIFIED TARGETS.—In the event that the targeted United States person is reasonably believed to be in the United States during the pendency of an order issued pursuant to subsection (c), such acquisition shall cease until authority is obtained pursuant to this Act or the targeted United States person is again reasonably believed to be located outside the United States during the pendency of an order issued pursuant to subsection (c).

“(B) APPLICABILITY.—If the acquisition is to be conducted inside the United States and could be authorized under section 704, the procedures of section 704 shall apply, unless an order or emergency acquisition authority has been obtained under a provision of this Act other than under this section.

“(b) APPLICATION.—Each application for an order under this section shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1). Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfies the criteria and requirements of such application as set forth in this section and shall include—

“(1) the identity, if known, or a description of the specific United States person who is the target of the acquisition;

“(2) a statement of the facts and circumstances relied upon to justify the applicant's belief that the United States person who is the target of the acquisition is—

“(A) a person reasonably believed to be located outside the United States; and

“(B) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

“(3) a statement of the proposed minimization procedures that meet the definition of minimization procedures under section 101(h) or section 301(4);

“(4) a certification made by the Attorney General, an official specified in section 104(a)(6), or the head of an element of the intelligence community that—

“(A) the certifying official deems the information sought to be foreign intelligence information; and

“(B) a significant purpose of the acquisition is to obtain foreign intelligence information;

“(5) a statement of the facts concerning any previous applications that have been made to any judge of the Foreign Intelligence Surveillance Court involving the United States person specified in the application and the action taken on each previous application; and

“(6) a statement of the period of time for which the acquisition is required to be maintained, provided that such period of time shall not exceed 90 days per application.

“(c) ORDER.—

“(1) FINDINGS.—If, upon an application made pursuant to subsection (b), a judge having jurisdiction under subsection (a) finds that—

“(A) on the basis of the facts submitted by the applicant, for the United States person who is the target of the acquisition, there is probable cause to believe that the target is—

“(i) a person reasonably believed to be located outside the United States; and

“(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

“(B) the proposed minimization procedures, with respect to their dissemination provisions, meet the definition of minimization procedures under section 101(h) or section 301(4); and

“(C) the application which has been filed contains all statements and certifications required by subsection (b) and the certification provided under subsection (b)(4) is not clearly erroneous on the basis of the information furnished under subsection (b),

the Court shall issue an ex parte order so stating.

“(2) PROBABLE CAUSE.—In determining whether or not probable cause exists for purposes of an order under paragraph (1)(A), a judge having jurisdiction under subsection (a)(1) may consider past activities of the target, as well as facts and circumstances relating to current or future activities of the target. However, no United States person may be considered a foreign power, agent of a foreign power, or officer or employee of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

“(3) REVIEW.—

“(A) LIMITATIONS ON REVIEW.—Review by a judge having jurisdiction under subsection (a)(1) shall be limited to that required to make the findings described in paragraph (1). The judge shall not have jurisdiction to review the means by which an acquisition under this section may be conducted.

“(B) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted under subsection (b) are insufficient to establish probable cause to issue an order under this subsection, the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (e).

“(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the minimization procedures applicable to dissemination of information obtained through an acquisition under this subsection do not meet the definition of minimization procedures under section 101(h) or section 301(4), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (e).

“(D) SCOPE OF REVIEW OF CERTIFICATION.—If the judge determines that the certification provided under subsection (b)(4) is clearly erroneous on the basis of the information furnished under subsection (b), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this subparagraph pursuant to subsection (e).

“(4) DURATION.—An order under this paragraph shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

“(5) COMPLIANCE.—At or prior to the end of the period of time for which an order or extension is granted under this section, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was disseminated, provided that the judge may not inquire into the circumstances relating to the conduct of the acquisition.

“(d) EMERGENCY AUTHORIZATION.—

“(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other provision in this subsection, if the Attorney General reasonably determines that—

“(A) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subsection (c) before an order under that subsection may, with due diligence, be obtained, and

“(B) the factual basis for issuance of an order under this section exists,

the Attorney General may authorize the emergency acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General or a designee of the Attorney General at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this subsection is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days after the Attorney General authorizes such acquisition.

“(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes such emergency acquisition, the Attorney General shall require that the minimization procedures required by this section be followed.

“(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of an order under subsection (c), the acquisition shall terminate when the information sought is obtained, if the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

“(4) USE OF INFORMATION.—In the event that such application is denied, or in any other case where the acquisition is terminated and no order is issued approving the acquisition, no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person during the pendency of the 7-day emergency acquisition period, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

“(e) APPEAL.—

“(1) APPEAL TO THE COURT OF REVIEW.—The Government may file an appeal with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to consider such appeal and shall provide a written statement for the record of the reasons for a decision under this paragraph.

“(2) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of the decision of the Court of Review issued under paragraph (1). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

“SEC. 706. JOINT APPLICATIONS AND CONCURRENT AUTHORIZATIONS.

“(a) JOINT APPLICATIONS AND ORDERS.—If an acquisition targeting a United States person under section 704 or section 705 is proposed to be conducted both inside and outside the United States, a judge having jurisdiction under section 704(a)(1) or section 705(a)(1) may issue simultaneously, upon the



request of the Government in a joint application complying with the requirements of section 704(b) or section 705(b), orders under section 704(c) or section 705(c), as applicable.

“(b) CONCURRENT AUTHORIZATION.—If an order authorizing electronic surveillance or physical search has been obtained under section 105 or section 304 and that order is still in effect, the Attorney General may authorize, without an order under section 704 or section 705, an acquisition of foreign intelligence information targeting that United States person while such person is reasonably believed to be located outside the United States.

**“SEC. 707. USE OF INFORMATION ACQUIRED UNDER TITLE VII.**

“(a) INFORMATION ACQUIRED UNDER SECTION 703.—Information acquired from an acquisition conducted under section 703 shall be deemed to be information acquired from an electronic surveillance pursuant to title I for purposes of section 106, except for the purposes of subsection (j) of such section.

“(b) INFORMATION ACQUIRED UNDER SECTION 704.—Information acquired from an acquisition conducted under section 704 shall be deemed to be information acquired from an electronic surveillance pursuant to title I for purposes of section 106.

**“SEC. 708. CONGRESSIONAL OVERSIGHT.**

“(a) SEMIANNUAL REPORT.—Not less frequently than once every 6 months, the Attorney General shall fully inform, in a manner consistent with national security, the congressional intelligence committees, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives, concerning the implementation of this title.

“(b) CONTENT.—Each report made under subparagraph (a) shall include—

“(1) with respect to section 703—

“(A) any certifications made under subsection 703(f) during the reporting period;

“(B) any directives issued under subsection 703(g) during the reporting period;

“(C) a description of the judicial review during the reporting period of any such certifications and targeting and minimization procedures utilized with respect to such acquisition, including a copy of any order or pleading in connection with such review that contains a significant legal interpretation of the provisions of this section;

“(D) any actions taken to challenge or enforce a directive under paragraphs (4) or (5) of section 703(g);

“(E) any compliance reviews conducted by the Department of Justice or the Office of the Director of National Intelligence of acquisitions authorized under subsection 703(a);

“(F) a description of any incidents of non-compliance with a directive issued by the Attorney General and the Director of National Intelligence under subsection 703(g), including—

“(i) incidents of noncompliance by an element of the intelligence community with procedures adopted pursuant to subsections (d) and (e) of section 703; and

“(ii) incidents of noncompliance by a specified person to whom the Attorney General and Director of National Intelligence issued a directive under subsection 703(g); and

“(G) any procedures implementing this section;

“(2) with respect to section 704—

“(A) the total number of applications made for orders under section 704(b);

“(B) the total number of such orders either granted, modified, or denied; and

“(C) the total number of emergency acquisitions authorized by the Attorney General under section 704(d) and the total number of subsequent orders approving or denying such acquisitions; and

“(3) with respect to section 705—

“(A) the total number of applications made for orders under 705(b);

“(B) the total number of such orders either granted, modified, or denied; and

“(C) the total number of emergency acquisitions authorized by the Attorney General under subsection 705(d) and the total number of subsequent orders approving or denying such applications.”

(b) TABLE OF CONTENTS.—The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et. seq.) is amended—

(1) by striking the item relating to title VII;

(2) by striking the item relating to section 701; and

(3) by adding at the end the following:

**“TITLE VII—ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES**

“Sec. 701. Limitation on definition of electronic surveillance.

“Sec. 702. Definitions.

“Sec. 703. Procedures for targeting certain persons outside the United States other than United States persons.

“Sec. 704. Certain acquisitions inside the United States of United States persons outside the United States.

“Sec. 705. Other acquisitions targeting United States persons outside the United States.

“Sec. 706. Joint applications and concurrent authorizations.

“Sec. 707. Use of information acquired under title VII.

“Sec. 708. Congressional oversight.”

**(c) TECHNICAL AND CONFORMING AMENDMENTS.—**

(1) TITLE 18, UNITED STATES CODE.—

(A) SECTION 2232.—Section 2232(e) of title 18, United States Code, is amended by inserting “(as defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978, regardless of the limitation of section 701 of that Act)” after “electronic surveillance”.

(B) SECTION 2511.—Section 2511(2)(a)(ii)(A) of title 18, United States Code, is amended by inserting “or a court order pursuant to section 705 of the Foreign Intelligence Surveillance Act of 1978” after “assistance”.

(2) FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.—

(A) SECTION 109.—Section 109 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809) is amended by adding at the end the following:

“(e) DEFINITION.—For the purpose of this section, the term ‘electronic surveillance’ means electronic surveillance as defined in section 101(f) of this Act regardless of the limitation of section 701 of this Act.”

(B) SECTION 110.—Section 110 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1810) is amended by—

(i) adding an “(a)” before “CIVIL ACTION”;

(ii) redesignating subsections (a) through (c) as paragraphs (1) through (3), respectively; and

(iii) adding at the end the following:

“(b) DEFINITION.—For the purpose of this section, the term ‘electronic surveillance’ means electronic surveillance as defined in section 101(f) of this Act regardless of the limitation of section 701 of this Act.”

(C) SECTION 601.—Section 601(a)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871(a)(1)) is amended by striking subparagraphs (C) and (D) and inserting the following:

“(C) pen registers under section 402;

“(D) access to records under section 501;

“(E) acquisitions under section 704; and

“(F) acquisitions under section 705;”.

(d) TERMINATION OF AUTHORITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsections (a)(2), (b), and (c) shall cease to have effect on December 31, 2013.

(2) CONTINUING APPLICABILITY.—Section 703(g)(3) of the Foreign Intelligence Surveillance Act of 1978 (as amended by subsection (a)) shall remain in effect with respect to any directive issued pursuant to section 703(g) of that Act (as so amended) for information, facilities, or assistance provided during the period such directive was or is in effect. Section 704(e) of the Foreign Intelligence Surveillance Act of 1978 (as amended by subsection (a)) shall remain in effect with respect to an order or request for emergency assistance under that section. The use of information acquired by an acquisition conducted under section 703 of that Act (as so amended) shall continue to be governed by the provisions of section 707 of that Act (as so amended).

**SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH ELECTRONIC SURVEILLANCE AND INTERCEPTION OF DOMESTIC COMMUNICATIONS MAY BE CONDUCTED.**

(a) STATEMENT OF EXCLUSIVE MEANS.—Title I of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by adding at the end the following new section:

“STATEMENT OF EXCLUSIVE MEANS BY WHICH ELECTRONIC SURVEILLANCE AND INTERCEPTION OF DOMESTIC COMMUNICATIONS MAY BE CONDUCTED

“SEC. 112. The procedures of chapters 119, 121, and 206 of title 18, United States Code, and this Act shall be the exclusive means by which electronic surveillance (as defined in section 101(f), regardless of the limitation of section 701) and the interception of domestic wire, oral, or electronic communications may be conducted.”

(b) TABLE OF CONTENTS.—The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by adding after the item relating to section 111, the following:

“Sec. 112. Statement of exclusive means by which electronic surveillance and interception of domestic communications may be conducted.”

(c) CONFORMING AMENDMENTS.—Section 2511(2) of title 18, United States Code, is amended in paragraph (f), by striking “, as defined in section 101 of such Act,” and inserting “(as defined in section 101(f) of such Act regardless of the limitation of section 701 of such Act)”.

**SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN COURT ORDERS UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.**

(a) INCLUSION OF CERTAIN ORDERS IN SEMIANNUAL REPORTS OF ATTORNEY GENERAL.—Subsection (a)(5) of section 601 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871) is amended by striking “(not including orders)” and inserting “, orders.”

(b) REPORTS BY ATTORNEY GENERAL ON CERTAIN OTHER ORDERS.—Such section 601 is further amended by adding at the end the following:

“(c) SUBMISSIONS TO CONGRESS.—The Attorney General shall submit to the committees of Congress referred to in subsection (a)—

“(1) a copy of any decision, order, or opinion issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review that includes significant construction or interpretation of any provision of this Act, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion,

not later than 45 days after such decision, order, or opinion is issued; and

“(2) a copy of any such decision, order, or opinion, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion, that was issued during the 5-year period ending on the date of the enactment of the FISA Amendments Act of 2008 and not previously submitted in a report under subsection (a).

“(d) PROTECTION OF NATIONAL SECURITY.—The Attorney General, in consultation with the Director of National Intelligence, may authorize redactions of materials described in subsection (c) that are provided to the committees of Congress referred to in subsection (a), if such redactions are necessary to protect the national security of the United States and are limited to sensitive sources and methods information or the identities of targets.”.

(c) DEFINITIONS.—Such section 601, as amended by subsections (a) and (b), is further amended by adding at the end the following:

“(e) DEFINITIONS.—In this section:

“(1) FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.—The term ‘‘Foreign Intelligence Surveillance Court’’ means the court established by section 103(a).

“(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW; COURT OF REVIEW.—The term ‘‘Foreign Intelligence Surveillance Court of Review’’ means the court established by section 103(b).”.

#### SEC. 104. APPLICATIONS FOR COURT ORDERS.

Section 104 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (2) and (11);

(B) by redesignating paragraphs (3) through (10) as paragraphs (2) through (9), respectively;

(C) in paragraph (5), as redesignated by subparagraph (B) of this paragraph, by striking “‘detailed’”;

(D) in paragraph (6), as redesignated by subparagraph (B) of this paragraph, in the matter preceding subparagraph (A)—

(i) by striking “‘Affairs or’ and inserting “‘Affairs,’” and

(ii) by striking “‘Senate—’ and inserting “‘Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—’”;

(E) in paragraph (7), as redesignated by subparagraph (B) of this paragraph, by striking “‘statement of’ and inserting “‘summary statement of’”;

(F) in paragraph (8), as redesignated by subparagraph (B) of this paragraph, by adding “‘and’ at the end; and

(G) in paragraph (9), as redesignated by subparagraph (B) of this paragraph, by striking “‘; and’ and inserting a period;

(2) by striking subsection (b);

(3) by redesignating subsections (c) through (e) as subsections (b) through (d), respectively; and

(4) in paragraph (1)(A) of subsection (d), as redesignated by paragraph (3) of this subsection, by striking “‘or the Director of National Intelligence’ and inserting “‘the Director of National Intelligence, or the Director of the Central Intelligence Agency’”.

#### SEC. 105. ISSUANCE OF AN ORDER.

Section 105 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805) is amended—

(1) in subsection (a)—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively;

(2) in subsection (b), by striking “‘(a)(3)’ and inserting “‘(a)(2)’”;

(3) in subsection (c)(1)—

(A) in subparagraph (D), by adding “‘and’ at the end;

(B) in subparagraph (E), by striking “‘; and’ and inserting a period; and

(C) by striking subparagraph (F);

(4) by striking subsection (d);

(5) by redesignating subsections (e) through (i) as subsections (d) through (h), respectively;

(6) by amending subsection (e), as redesignated by paragraph (5) of this section, to read as follows:

“(e)(1) Notwithstanding any other provision of this title, the Attorney General may authorize the emergency employment of electronic surveillance if the Attorney General—

“(A) reasonably determines that an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained;

“(B) reasonably determines that the factual basis for issuance of an order under this title to approve such electronic surveillance exists;

“(C) informs, either personally or through a designee, a judge having jurisdiction under section 103 at the time of such authorization that the decision has been made to employ emergency electronic surveillance; and

“(D) makes an application in accordance with this title to a judge having jurisdiction under section 103 as soon as practicable, but not later than 7 days after the Attorney General authorizes such surveillance.

“(2) If the Attorney General authorizes the emergency employment of electronic surveillance under paragraph (1), the Attorney General shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.

“(3) In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

“(4) A denial of the application made under this subsection may be reviewed as provided in section 103.

“(5) In the event that such application for approval is denied, or in any other case where the electronic surveillance is terminated and no order is issued approving the surveillance, no information obtained or evidence derived from such surveillance shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such surveillance shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

“(6) The Attorney General shall assess compliance with the requirements of paragraph (5).”;

(7) by adding at the end the following:

“(i) In any case in which the Government makes an application to a judge under this title to conduct electronic surveillance involving communications and the judge grants such application, upon the request of the applicant, the judge shall also authorize the installation and use of pen registers and trap and trace devices, and direct the disclo-

sure of the information set forth in section 402(d)(2).”.

#### SEC. 106. USE OF INFORMATION.

Subsection (i) of section 106 of the Foreign Intelligence Surveillance Act of 1978 (8 U.S.C. 1806) is amended by striking “radio communication” and inserting “communication”.

#### SEC. 107. AMENDMENTS FOR PHYSICAL SEARCHES.

(a) APPLICATIONS.—Section 303 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1823) is amended—

(1) in subsection (a)—

(A) by striking paragraph (2);

(B) by redesignating paragraphs (3) through (9) as paragraphs (2) through (8), respectively;

(C) in paragraph (2), as redesignated by subparagraph (B) of this paragraph, by striking “‘detailed’”;

(D) in paragraph (3)(C), as redesignated by subparagraph (B) of this paragraph, by inserting “‘or is about to be’ before “‘owned’”;

(E) in paragraph (6), as redesignated by subparagraph (B) of this paragraph, in the matter preceding subparagraph (A)—

(i) by striking “‘Affairs or’ and inserting “‘Affairs,’” and

(ii) by striking “‘Senate—’ and inserting “‘Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—’”;

(2) in subsection (d)(1)(A), by striking “‘or the Director of National Intelligence’ and inserting “‘the Director of National Intelligence, or the Director of the Central Intelligence Agency’”.

(b) ORDERS.—Section 304 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1824) is amended—

(1) in subsection (a)—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively; and

(2) by amending subsection (e) to read as follows:

“(e)(1) Notwithstanding any other provision of this title, the Attorney General may authorize the emergency employment of a physical search if the Attorney General reasonably—

“(A) determines that an emergency situation exists with respect to the employment of a physical search to obtain foreign intelligence information before an order authorizing such physical search can with due diligence be obtained;

“(B) determines that the factual basis for issuance of an order under this title to approve such physical search exists;

“(C) informs, either personally or through a designee, a judge of the Foreign Intelligence Surveillance Court at the time of such authorization that the decision has been made to employ an emergency physical search; and

“(D) makes an application in accordance with this title to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days after the Attorney General authorizes such physical search.

“(2) If the Attorney General authorizes the emergency employment of a physical search under paragraph (1), the Attorney General shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.

“(3) In the absence of a judicial order approving such physical search, the physical search shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.



“(4) A denial of the application made under this subsection may be reviewed as provided in section 103.

“(5)(A) In the event that such application for approval is denied, or in any other case where the physical search is terminated and no order is issued approving the physical search, no information obtained or evidence derived from such physical search shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such physical search shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

“(B) The Attorney General shall assess compliance with the requirements of subparagraph (A).”

(c) CONFORMING AMENDMENTS.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) in section 304(a)(4), as redesignated by subsection (b) of this section, by striking “303(a)(7)(E)” and inserting “303(a)(6)(E)”; and

(2) in section 305(k)(2), by striking “303(a)(7)” and inserting “303(a)(6)”.

#### SEC. 108. AMENDMENTS FOR EMERGENCY PEN REGISTERS AND TRAP AND TRACE DEVICES.

Section 403 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1843) is amended—

(1) in subsection (a)(2), by striking “48 hours” and inserting “7 days”; and

(2) in subsection (c)(1)(C), by striking “48 hours” and inserting “7 days”.

#### SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE COURT.

(a) DESIGNATION OF JUDGES.—Subsection (a) of section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended by inserting “at least” before “seven of the United States judicial circuits”.

(b) EN BANC AUTHORITY.—

(1) IN GENERAL.—Subsection (a) of section 103 of the Foreign Intelligence Surveillance Act of 1978, as amended by subsection (a) of this section, is further amended—

(A) by inserting “(1)” after “(a)”; and

(B) by adding at the end the following new paragraph:

“(2)(A) The court established under this subsection may, on its own initiative, or upon the request of the Government in any proceeding or a party under section 501(f) or paragraph (4) or (5) of section 703(h), hold a hearing or rehearing, en banc, when ordered by a majority of the judges that constitute such court upon a determination that—

“(i) en banc consideration is necessary to secure or maintain uniformity of the court’s decisions; or

“(ii) the proceeding involves a question of exceptional importance.

“(B) Any authority granted by this Act to a judge of the court established under this subsection may be exercised by the court en banc. When exercising such authority, the court en banc shall comply with any requirements of this Act on the exercise of such authority.

“(C) For purposes of this paragraph, the court en banc shall consist of all judges who constitute the court established under this subsection.”

(2) CONFORMING AMENDMENTS.—The Foreign Intelligence Surveillance Act of 1978 is further amended—

(A) in subsection (a) of section 103, as amended by this subsection, by inserting “(except when sitting en banc under paragraph (2))” after “no judge designated under this subsection”; and

(B) in section 302(c) (50 U.S.C. 1822(c)), by inserting “(except when sitting en banc)” after “except that no judge”.

(c) STAY OR MODIFICATION DURING AN APPEAL.—Section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (e) the following new subsection:

“(f)(1) A judge of the court established under subsection (a), the court established under subsection (b) or a judge of that court, or the Supreme Court of the United States or a justice of that court, may, in accordance with the rules of their respective courts, enter a stay of an order or an order modifying an order of the court established under subsection (a) or the court established under subsection (b) entered under any title of this Act, while the court established under subsection (a) conducts a rehearing, while an appeal is pending to the court established under subsection (b), or while a petition of certiorari is pending in the Supreme Court of the United States, or during the pendency of any review by that court.

“(2) The authority described in paragraph (1) shall apply to an order entered under any provision of this Act.”

(d) AUTHORITY OF FOREIGN INTELLIGENCE SURVEILLANCE COURT.—Section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803), as amended by this Act, is amended by adding at the end the following:

“(h)(1) Nothing in this Act shall be considered to reduce or contravene the inherent authority of the Foreign Intelligence Surveillance Court to determine, or enforce, compliance with an order or a rule of such Court or with a procedure approved by such Court.

“(2) In this subsection, the terms ‘Foreign Intelligence Surveillance Court’ and ‘Court’ mean the court established by subsection (a).”

#### SEC. 110. WEAPONS OF MASS DESTRUCTION.

(a) DEFINITIONS.—

(1) FOREIGN POWER.—Subsection (a)(4) of section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(a)(4)) is amended by inserting “, the international proliferation of weapons of mass destruction,” after “international terrorism”.

(2) AGENT OF A FOREIGN POWER.—Subsection (b)(1) of such section 101 is amended—

(A) in subparagraph (B), by striking “or” at the end

(B) in subparagraph (C), by striking “or” at the end; and

(C) by adding at the end the following new subparagraphs:

“(D) engages in the international proliferation of weapons of mass destruction, or activities in preparation thereof; or

“(E) engages in the international proliferation of weapons of mass destruction, or activities in preparation thereof, for or on behalf of a foreign power; or”.

(3) FOREIGN INTELLIGENCE INFORMATION.—Subsection (e)(1)(B) of such section 101 is amended by striking “sabotage or international terrorism” and inserting “sabotage, international terrorism, or the international proliferation of weapons of mass destruction”.

(4) WEAPON OF MASS DESTRUCTION.—Such section 101 is amended by inserting after subsection (c) the following:

“(p) ‘Weapon of mass destruction’ means—

“(1) any destructive device described in section 921(a)(4)(A) of title 18, United States

Code, that is intended or has the capability to cause death or serious bodily injury to a significant number of people;

“(2) any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals or their precursors;

“(3) any weapon involving a biological agent, toxin, or vector (as such terms are defined in section 178 of title 18, United States Code); or

“(4) any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.”

(b) USE OF INFORMATION.—

(1) IN GENERAL.—Section 106(k)(1)(B) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806(k)(1)(B)) is amended by striking “sabotage or international terrorism” and inserting “sabotage, international terrorism, or the international proliferation of weapons of mass destruction”.

(2) PHYSICAL SEARCHES.—Section 305(k)(1)(B) of such Act (50 U.S.C. 1825(k)(1)(B)) is amended by striking “sabotage or international terrorism” and inserting “sabotage, international terrorism, or the international proliferation of weapons of mass destruction”.

(c) TECHNICAL AND CONFORMING AMENDMENT.—Section 301(l) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1821(l)) is amended by inserting “‘weapon of mass destruction,’” after “‘person,’”.

#### SEC. 111. TECHNICAL AND CONFORMING AMENDMENTS.

Section 103(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(e)) is amended—

(1) in paragraph (1), by striking “105B(h) or 501(f)(1)” and inserting “501(f)(1) or 703”; and

(2) in paragraph (2), by striking “105B(h) or 501(f)(1)” and inserting “501(f)(1) or 703”.

#### Subtitle B—Protections for Electronic Communication Service Providers

#### SEC. 201. DEFINITIONS.

In this title:

(1) ASSISTANCE.—The term “assistance” means the provision of, or the provision of access to, information (including communication contents, communications records, or other information relating to a customer or communication), facilities, or another form of assistance.

(2) CONTENTS.—The term “contents” has the meaning given that term in section 101(n) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(n)).

(3) COVERED CIVIL ACTION.—The term “covered civil action” means a civil action filed in a Federal or State court that—

(A) alleges that an electronic communication service provider furnished assistance to an element of the intelligence community; and

(B) seeks monetary or other relief from the electronic communication service provider related to the provision of such assistance.

(4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term “electronic communication service provider” means—

(A) a telecommunications carrier, as that term is defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153);

(B) a provider of an electronic communication service, as that term is defined in section 2510 of title 18, United States Code;

(C) a provider of a remote computing service, as that term is defined in section 2711 of title 18, United States Code;

(D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored;

(E) a parent, subsidiary, affiliate, successor, or assignee of an entity described in subparagraph (A), (B), (C), or (D); or

(F) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), (D), or (E).

(5) **ELEMENT OF THE INTELLIGENCE COMMUNITY.**—The term “element of the intelligence community” means an element of the intelligence community specified in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

## **SEC. 202. LIMITATIONS ON CIVIL ACTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS.**

### **(a) LIMITATIONS.—**

(1) **IN GENERAL.**—Notwithstanding any other provision of law, a covered civil action shall not lie or be maintained in a Federal or State court, and shall be promptly dismissed, if the Attorney General certifies to the court that—

(A) the assistance alleged to have been provided by the electronic communication service provider was—

(i) in connection with an intelligence activity involving communications that was—

(I) authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007; and

(II) designed to detect or prevent a terrorist attack, or activities in preparation for a terrorist attack, against the United States; and

(ii) described in a written request or directive from the Attorney General or the head of an element of the intelligence community (or the deputy of such person) to the electronic communication service provider indicating that the activity was—

(I) authorized by the President; and

(II) determined to be lawful; or

(B) the electronic communication service provider did not provide the alleged assistance.

(2) **REVIEW.**—A certification made pursuant to paragraph (1) shall be subject to review by a court for abuse of discretion.

(b) **REVIEW OF CERTIFICATIONS.**—If the Attorney General files a declaration under section 1746 of title 28, United States Code, that disclosure of a certification made pursuant to subsection (a) would harm the national security of the United States, the court shall—

(1) review such certification in camera and ex parte; and

(2) limit any public disclosure concerning such certification, including any public order following such an ex parte review, to a statement that the conditions of subsection (a) have been met, without disclosing the subparagraph of subsection (a)(1) that is the basis for the certification.

(c) **NONDELEGATION.**—The authority and duties of the Attorney General under this section shall be performed by the Attorney General (or Acting Attorney General) or a designee in a position not lower than the Deputy Attorney General.

(d) **CIVIL ACTIONS IN STATE COURT.**—A covered civil action that is brought in a State court shall be deemed to arise under the Constitution and laws of the United States and shall be removable under section 1441 of title 28, United States Code.

(e) **RULE OF CONSTRUCTION.**—Nothing in this section may be construed to limit any otherwise available immunity, privilege, or defense under any other provision of law.

(f) **EFFECTIVE DATE AND APPLICATION.**—This section shall apply to any covered civil action that is pending on or filed after the date of enactment of this Act.

## **SEC. 203. PROCEDURES FOR IMPLEMENTING STATUTORY DEFENSES UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.**

The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), as amended by

section 101, is further amended by adding after title VII the following new title:

### **“TITLE VIII—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT**

#### **“SEC. 801. DEFINITIONS.**

“In this title:

“(1) **ASSISTANCE.**—The term ‘assistance’ means the provision of, or the provision of access to, information (including communication contents, communications records, or other information relating to a customer or communication), facilities, or another form of assistance.

“(2) **ATTORNEY GENERAL.**—The term ‘Attorney General’ has the meaning give that term in section 101(g).

“(3) **CONTENTS.**—The term ‘contents’ has the meaning given that term in section 101(n).

“(4) **ELECTRONIC COMMUNICATION SERVICE PROVIDER.**—The term ‘electronic communication service provider’ means—

“(A) a telecommunications carrier, as that term is defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153);

“(B) a provider of electronic communication service, as that term is defined in section 2510 of title 18, United States Code;

“(C) a provider of a remote computing service, as that term is defined in section 2711 of title 18, United States Code;

“(D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored;

“(E) a parent, subsidiary, affiliate, successor, or assignee of an entity described in subparagraph (A), (B), (C), or (D); or

“(F) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), (D), or (E).

“(5) **ELEMENT OF THE INTELLIGENCE COMMUNITY.**—The term ‘element of the intelligence community’ means an element of the intelligence community as specified or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

“(6) **PERSON.**—The term ‘person’ means—

“(A) an electronic communication service provider; or

“(B) a landlord, custodian, or other person who may be authorized or required to furnish assistance pursuant to—

“(i) an order of the court established under section 103(a) directing such assistance;

“(ii) a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title 18, United States Code; or

“(iii) a directive under section 102(a)(4), 105B(e), as in effect on the day before the date of the enactment of the FISA Amendments Act of 2008 or 703(h).

“(7) **STATE.**—The term ‘State’ means any State, political subdivision of a State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States, and includes any officer, public utility commission, or other body authorized to regulate an electronic communication service provider.

#### **“SEC. 802. PROCEDURES FOR IMPLEMENTING STATUTORY DEFENSES.**

“(a) **REQUIREMENT FOR CERTIFICATION.**—

“(1) **IN GENERAL.**—Notwithstanding any other provision of law, no civil action may lie or be maintained in a Federal or State court against any person for providing assistance to an element of the intelligence community, and shall be promptly dismissed, if the Attorney General certifies to the court that—

“(A) any assistance by that person was provided pursuant to an order of the court established under section 103(a) directing such assistance;

“(B) any assistance by that person was provided pursuant to a certification in writing

under section 2511(2)(a)(ii)(B) or 2709(b) of title 18, United States Code;

“(C) any assistance by that person was provided pursuant to a directive under sections 102(a)(4), 105B(e), as in effect on the day before the date of the enactment of the FISA Amendments Act of 2008, or 703(h) directing such assistance; or

“(D) the person did not provide the alleged assistance.

“(2) **REVIEW.**—A certification made pursuant to paragraph (1) shall be subject to review by a court for abuse of discretion.

“(b) **LIMITATIONS ON DISCLOSURE.**—If the Attorney General files a declaration under section 1746 of title 28, United States Code, that disclosure of a certification made pursuant to subsection (a) would harm the national security of the United States, the court shall—

“(1) review such certification in camera and ex parte; and

“(2) limit any public disclosure concerning such certification, including any public order following such an ex parte review, to a statement that the conditions of subsection (a) have been met, without disclosing the subparagraph of subsection (a)(1) that is the basis for the certification.

“(c) **REMOVAL.**—A civil action against a person for providing assistance to an element of the intelligence community that is brought in a State court shall be deemed to arise under the Constitution and laws of the United States and shall be removable under section 1441 of title 28, United States Code.

“(d) **RELATIONSHIP TO OTHER LAWS.**—Nothing in this section may be construed to limit any otherwise available immunity, privilege, or defense under any other provision of law.

“(e) **APPLICABILITY.**—This section shall apply to a civil action pending on or filed after the date of enactment of the FISA Amendments Act of 2008.”

## **SEC. 204. PREEMPTION OF STATE INVESTIGATIONS.**

Title VIII of the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 et seq.), as added by section 203 of this Act, is amended by adding at the end the following new section:

### **“SEC. 803. PREEMPTION.**

“(a) **IN GENERAL.**—No State shall have authority to—

“(1) conduct an investigation into an electronic communication service provider’s alleged assistance to an element of the intelligence community;

“(2) require through regulation or any other means the disclosure of information about an electronic communication service provider’s alleged assistance to an element of the intelligence community;

“(3) impose any administrative sanction on an electronic communication service provider for assistance to an element of the intelligence community; or

“(4) commence or maintain a civil action or other proceeding to enforce a requirement that an electronic communication service provider disclose information concerning alleged assistance to an element of the intelligence community.

“(b) **SUITS BY THE UNITED STATES.**—The United States may bring suit to enforce the provisions of this section.

“(c) **JURISDICTION.**—The district courts of the United States shall have jurisdiction over any civil action brought by the United States to enforce the provisions of this section.

“(d) **APPLICATION.**—This section shall apply to any investigation, action, or proceeding that is pending on or filed after the date of enactment of the FISA Amendments Act of 2008.”

## **SEC. 205. TECHNICAL AMENDMENTS.**

The table of contents in the first section of the Foreign Intelligence Surveillance Act of

1978 (50 U.S.C. 1801 et seq.), as amended by section 101(b), is further amended by adding at the end the following:

“TITLE VIII—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT

“Sec. 801. Definitions.

“Sec. 802. Procedures for implementing statutory defenses.

“Sec. 803. Preemption.”

**Subtitle C—Other Provisions**

**SEC. 301. SEVERABILITY.**

If any provision of this Act, any amendment made by this Act, or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act, any such amendments, and of the application of such provisions to other persons and circumstances shall not be affected thereby.

**SEC. 302. EFFECTIVE DATE; REPEAL; TRANSITION PROCEDURES.**

(a) IN GENERAL.—Except as provided in subsection (c), the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) REPEAL.—

(1) IN GENERAL.—Except as provided in subsection (c), sections 105A, 105B, and 105C of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805a, 1805b, and 1805c) are repealed.

(2) TABLE OF CONTENTS.—The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by striking the items relating to sections 105A, 105B, and 105C.

(c) TRANSITIONS PROCEDURES.—

(1) PROTECTION FROM LIABILITY.—Notwithstanding subsection (b)(1), subsection (1) of section 105B of the Foreign Intelligence Surveillance Act of 1978 shall remain in effect with respect to any directives issued pursuant to such section 105B for information, facilities, or assistance provided during the period such directive was or is in effect.

(2) ORDERS IN EFFECT.—

(A) ORDERS IN EFFECT ON DATE OF ENACTMENT.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978—

(i) any order in effect on the date of enactment of this Act issued pursuant to the Foreign Intelligence Surveillance Act of 1978 or section 6(b) of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 556) shall remain in effect until the date of expiration of such order; and

(ii) at the request of the applicant, the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)) shall reauthorize such order if the facts and circumstances continue to justify issuance of such order under the provisions of such Act, as in effect on the day before the date of the enactment of the Protect America Act of 2007, except as amended by sections 102, 103, 104, 105, 106, 107, 108, 109, and 110 of this Act.

(B) ORDERS IN EFFECT ON DECEMBER 31, 2013.—Any order issued under title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101 of this Act, in effect on December 31, 2013, shall continue in effect until the date of the expiration of such order. Any such order shall be governed by the applicable provisions of the Foreign Intelligence Surveillance Act of 1978, as so amended.

(3) AUTHORIZATIONS AND DIRECTIVES IN EFFECT.—

(A) AUTHORIZATIONS AND DIRECTIVES IN EFFECT ON DATE OF ENACTMENT.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978, any authorization or directive in effect on the date of the enactment of this Act

issued pursuant to the Protect America Act of 2007, or any amendment made by that Act, shall remain in effect until the date of expiration of such authorization or directive. Any such authorization or directive shall be governed by the applicable provisions of the Protect America Act of 2007 (121 Stat. 552), and the amendment made by that Act, and, except as provided in paragraph (4) of this subsection, any acquisition pursuant to such authorization or directive shall be deemed not to constitute electronic surveillance (as that term is defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(f)), as construed in accordance with section 105A of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805a)).

(B) AUTHORIZATIONS AND DIRECTIVES IN EFFECT ON DECEMBER 31, 2013.—Any authorization or directive issued under title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101 of this Act, in effect on December 31, 2013, shall continue in effect until the date of the expiration of such authorization or directive. Any such authorization or directive shall be governed by the applicable provisions of the Foreign Intelligence Surveillance Act of 1978, as so amended, and, except as provided in section 707 of the Foreign Intelligence Surveillance Act of 1978, as so amended, any acquisition pursuant to such authorization or directive shall be deemed not to constitute electronic surveillance (as that term is defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978, to the extent that such section 101(f) is limited by section 701 of the Foreign Intelligence Surveillance Act of 1978, as so amended).

(4) USE OF INFORMATION ACQUIRED UNDER PROTECT AMERICA ACT.—Information acquired from an acquisition conducted under the Protect America Act of 2007, and the amendments made by that Act, shall be deemed to be information acquired from an electronic surveillance pursuant to title I of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) for purposes of section 106 of that Act (50 U.S.C. 1806), except for purposes of subsection (j) of such section.

(5) NEW ORDERS.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978—

(A) the government may file an application for an order under the Foreign Intelligence Surveillance Act of 1978, as in effect on the day before the date of the enactment of the Protect America Act of 2007, except as amended by sections 102, 103, 104, 105, 106, 107, 108, 109, and 110 of this Act; and

(B) the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 shall enter an order granting such an application if the application meets the requirements of such Act, as in effect on the day before the date of the enactment of the Protect America Act of 2007, except as amended by sections 102, 103, 104, 105, 106, 107, 108, 109, and 110 of this Act.

(6) EXTANT AUTHORIZATIONS.—At the request of the applicant, the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 shall extinguish any extant authorization to conduct electronic surveillance or physical search entered pursuant to such Act.

(7) APPLICABLE PROVISIONS.—Any surveillance conducted pursuant to an order entered pursuant to this subsection shall be subject to the provisions of the Foreign Intelligence Surveillance Act of 1978, as in effect on the day before the date of the enactment of the Protect America Act of 2007, except as amended by sections 102, 103, 104, 105, 106, 107, 108, 109, and 110 of this Act.

(8) TRANSITION PROCEDURES CONCERNING THE TARGETING OF UNITED STATES PERSONS OVERSEAS.—Any authorization in effect on the

date of enactment of this Act under section 2.5 of Executive Order 12333 to intentionally target a United States person reasonably believed to be located outside the United States shall remain in effect, and shall constitute a sufficient basis for conducting such an acquisition targeting a United States person located outside the United States until the earlier of—

(A) the date that authorization expires; or

(B) the date that is 90 days after the date of the enactment of this Act.

H.R. 2537

OFFERED BY: MR. KUCINICH

AMENDMENT NO. 5: Page 3, line 3, strike “indicators” and insert “indicators. If, in carrying out such source identification and tracking program, a source of pathogenic contamination is identified by such State or local government, such State or local government shall make information on the existence of such source available to the public on the Internet within 24 hours of the identification of such source.”.

H.R. 2537

OFFERED BY: MR. PETERSON OF PENNSYLVANIA

AMENDMENT NO. 6: Before section 1 insert the following:

**TITLE I—BEACH PROTECTION**

In section 1 strike “This Act” and insert “This title”.

Add at the end the following new title:

**TITLE II—OFFSHORE GAS DEVELOPMENT**

**SEC. 21. SHORT TITLE.**

This title may be cited as the “National Environment and Energy Development Act”.

**SEC. 22. TERMINATION OF PROHIBITIONS ON EXPENDITURES FOR, AND WITHDRAWALS FROM, OFFSHORE GAS LEASING.**

(a) PROHIBITIONS ON EXPENDITURES.—All provisions of Federal law that prohibit the expenditure of appropriated funds to conduct natural gas leasing and preleasing activities for any area of the Outer Continental Shelf shall have no force or effect with respect to such activities.

(b) REVOCATION WITHDRAWALS.—All withdrawals of Federal submerged lands of the Outer Continental Shelf from leasing, including withdrawals by the President under the authority of section 12(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1341(a)), are hereby revoked and are no longer in effect with respect to the leasing of areas for exploration for, and development and production of, natural gas.

(c) PROHIBITIONS AND WITHDRAWALS FOR OIL NOT AFFECTED.—This section does not affect—

(1) any prohibition on the expenditure of appropriated funds to conduct oil leasing or preleasing activities; and

(2) any withdrawal of Federal submerged lands from leasing for exploration for, and development and production of, oil.

**SEC. 23. OUTER CONTINENTAL SHELF NATURAL GAS LEASING PROGRAM.**

The Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) is amended by inserting after section 9 the following:

**“SEC. 10. MORATORIA AREA AND STATE APPROVAL REQUIREMENT WITH RESPECT TO NATURAL GAS LEASING.**

“(a) BUFFER ZONE.—The Secretary may not grant any natural gas lease for any area of the outer Continental Shelf that is located within 25 miles of the coastline of a State.

“(b) STATE APPROVAL REQUIREMENT.—

“(1) IN GENERAL.—The Secretary may not issue any lease authorizing exploration for, or development of, natural gas in any area of the outer Continental Shelf that is located within 50 miles of the coastline of a State

unless the State has enacted a law approving of the issuance of such leases by the Secretary.

“(2) STATE APPROVAL PERMANENT.—Repeal of such a law by a State shall have no effect for purposes of paragraph (1).

“(c) STATE DISAPPROVAL AUTHORITY.—

“(1) IN GENERAL.—The Secretary may not issue any lease authorizing exploration for, or development of, natural gas in any area of the outer Continental Shelf that is located more than 50 miles and less than 100 miles from the coastline of a State if the State has enacted a law disapproving of the issuance of such leases by the Secretary.

“(2) REQUIREMENTS FOR STATE LAW.—A law enacted by a State for purposes of paragraph (1)—

“(A) shall have no force or effect for purposes of paragraph (1) unless first enacted by the State within the one-year period beginning on the date of the enactment of the National Environment and Energy Development Act; and

“(B) shall have no force or effect for purposes of paragraph (1) after the end of the 2-year period beginning on the date it first takes effect, unless the State, in the 2-year period preceding the application of the law for purposes of paragraph (1), enacted legislation extending the effectiveness of the law.”.

#### SEC. 24. SHARING OF REVENUES.

(a) IN GENERAL.—Section 8(g) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(g)) is amended—

(1) in paragraph (2) by striking “Notwithstanding” and inserting “Except as provided in paragraph (6), and notwithstanding”;

(2) by redesignating paragraphs (6) and (7) as paragraphs (8) and (9); and

(3) by inserting after paragraph (5) the following:

“(6) BONUS BIDS AND ROYALTIES UNDER QUALIFIED GAS LEASES.—

“(A) NEW GAS LEASES.—Of amounts received by the United States as bonus bids and royalties under any qualified gas lease on submerged lands that are located within the seaward boundaries of a State established under section 4(a)(2)(A)—

“(i) 25 percent shall be deposited in the general fund of the Treasury;

“(ii) 37.5 percent shall be paid to the States that are producing States with respect to those submerged lands;

“(iii) 8.0 percent shall be deposited in the Energy Efficiency and Renewables Reserve established by paragraph (7);

“(iv) 8.0 percent shall be deposited in the Carbon Capture and Sequestration Reserve established by paragraph (7);

“(v) 5.0 percent shall be deposited in the Chesapeake Bay Restoration Reserve established by paragraph (7);

“(vi) 5.0 percent shall be deposited in the Great Lakes Restoration Reserve established by paragraph (7);

“(vii) 3.0 percent shall be deposited in the Everglades Restoration Reserve established by paragraph (7);

“(viii) 3.0 percent shall be deposited in the Colorado River Basin Restoration Reserve established by paragraph (7);

“(ix) 3.0 percent shall be deposited in the San Francisco Bay Restoration Reserve established by paragraph (7); and

“(x) 2.5 percent shall be available, half to the Secretary of Health and Human Services for carrying out the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621, et seq.) and half to the Secretary of Energy for carrying out the Weatherization Assistance program under part A of title IV of the Energy Conservation and Production Act (42 U.S.C. 6861 et seq.).

“(B) LEASED TRACT THAT LIES PARTIALLY WITHIN THE SEAWARD BOUNDARIES OF A

STATE.—In the case of a leased tract that lies partially within the seaward boundaries of a State, the amounts of bonus bids and royalties from such tract that are subject to subparagraph (A) with respect to such State shall be a percentage of the total amounts of bonus bids and royalties from such tract that is equivalent to the total percentage of surface acreage of the tract that lies within such seaward boundaries.

“(C) USE OF PAYMENTS TO STATES.—Amounts paid to a State under subparagraph (A)(ii) shall be used by the State for one or more of the following:

“(i) Education.

“(ii) Transportation.

“(iii) Reducing taxes.

“(iv) Coastal and environmental restoration.

“(v) Energy infrastructure and projects.

“(vi) State seismic monitoring programs.

“(vii) Alternative energy development.

“(viii) Energy efficiency and conservation.

“(ix) Hurricane and natural disaster insurance programs.

“(x) Any other purpose determined by State law.

“(D) DEFINITIONS.—In this paragraph:

“(i) ADJACENT STATE.—The term ‘adjacent State’ means, with respect to any program, plan, lease sale, leased tract or other activity, proposed, conducted, or approved pursuant to the provisions of this Act, any State the laws of which are declared, pursuant to section 4(a)(2), to be the law of the United States for the portion of the outer Continental Shelf on which such program, plan, lease sale, leased tract, or activity appertains or is, or is proposed to be, conducted.

“(ii) ADJACENT ZONE.—The term ‘adjacent zone’ means, with respect to any program, plan, lease sale, leased tract, or other activity, proposed, conducted, or approved pursuant to the provisions of this Act, the portion of the outer Continental Shelf for which the laws of a particular adjacent State are declared, pursuant to section 4(a)(2), to be the law of the United States.

“(iii) PRODUCING STATE.—The term ‘producing State’ means an adjacent State having an adjacent zone containing leased tracts from which are derived bonus bids and royalties under a lease under this Act.

“(iv) STATE.—The term ‘State’ includes Puerto Rico and the other Territories of the United States.

“(v) QUALIFIED GAS LEASE.—The term ‘qualified gas lease’ means a lease under this Act granted after the date of the enactment of the National Environment and Energy Development Act that authorizes development and production of natural gas and associated condensate.

“(E) APPLICATION.—This paragraph shall apply to bonus bids and royalties received by the United States after September 30, 2007.

“(7) ESTABLISHMENT OF RESERVE ACCOUNTS.—

“(A) IN GENERAL.—For budgetary purposes, there is established as a separate account to receive deposits under paragraph (6)(A)—

“(i) the Energy Efficiency and Renewables Reserve to offset the cost of legislation enacted after the date of the enactment of the National Environment and Energy Development Act to accelerate the use of clean domestic renewable energy resources and alternative fuels; to promote the utilization of energy-efficient products and practices and conservation; and to increase research, development, and deployment of clean renewable energy and efficiency technologies.

“(ii) the Carbon Capture and Sequestration Reserve to offset the cost of legislation enacted after the date of the enactment of the National Environment and Energy Development Act to promote activities associated with carbon capture and sequestration;

“(iii) the Chesapeake Bay Restoration Reserve to offset the cost of legislation enacted after the date of the enactment of the National Environment and Energy Development Act to conduct restoration activities primarily or entirely within the Chesapeake Bay watershed that seeks to improve the overall health of the ecosystem of the Chesapeake Bay;

“(iv) the Great Lakes Restoration Reserve to offset the cost of legislation enacted after the date of the enactment of the National Environment and Energy Development Act to conduct restoration activities primarily or entirely within the Great Lakes watershed that seeks to improve the overall health of the ecosystem of the Great Lakes;

“(v) the Everglades Restoration Reserve to offset the cost of legislation enacted after the date of the enactment of the National Environment and Energy Development Act to conduct restoration activities primarily or entirely within the Florida Everglades watershed that seeks to improve the overall health of the ecosystem of the Everglades;

“(vi) the Colorado River Basin Restoration Reserve to offset the cost of legislation enacted after the date of the enactment of the National Environment and Energy Development Act to conduct restoration activities primarily or entirely within the Colorado River Basin watershed that seeks to improve the overall health of the ecosystem of the Colorado River Basin; and

“(vii) the San Francisco Bay Restoration Reserve to offset the cost of legislation enacted after the date of the enactment of the National Environment and Energy Development Act to conduct restoration activities primarily or entirely within the San Francisco Bay, California, watershed that seeks to improve the overall health of the ecosystem of San Francisco Bay.

“(B) PROCEDURE FOR ADJUSTMENTS.—

“(i) BUDGET COMMITTEE CHAIRMAN.—After the reporting of a bill or joint resolution, or the offering of an amendment thereto or the submission of a conference report thereon, providing funding for the purposes set forth in clause (i), (ii), (iii), (iv), (v), (vi), or (vii) of subparagraph (A) in excess of the amount of the deposits under paragraph (6)(A) for those purposes for fiscal year 2007, the chairman of the Committee on the Budget of the applicable House of Congress shall make the adjustments set forth in clause (ii) for the amount of new budget authority and outlays in that measure and the outlays flowing from that budget authority.

“(ii) MATTERS TO BE ADJUSTED.—The adjustments referred to in clause (i) are to be made to—

“(I) the discretionary spending limits, if any, set forth in the appropriate concurrent resolution on the budget;

“(II) the allocations made pursuant to the appropriate concurrent resolution on the budget pursuant to section 302(a) of the Congressional Budget Act of 1974; and

“(III) the budget aggregates contained in the appropriate concurrent resolution on the budget as required by section 301(a) of the Congressional Budget Act of 1974.

“(iii) AMOUNTS OF ADJUSTMENTS.—The adjustments referred to in clauses (i) and (ii) shall not exceed the receipts estimated by the Congressional Budget Office that are attributable to this Act for the fiscal year in which the adjustments are made.

“(C) EXPENDITURES ONLY BY SECRETARY OF THE INTERIOR IN CONSULTATION.—Legislation shall not be treated as legislation referred to in subparagraph (A) unless any expenditure under such legislation for a purpose referred to in that subparagraph may be made only

by the Secretary of the Interior after consultation with the Administrator of the Environmental Protection Agency, the Administrator of the National Oceanic and Atmospheric Administration, the Secretary of the Army acting through the Corps of Engineers, and, as appropriate, the Secretary of State.

“(8) MAINTENANCE OF EFFORT BY STATES.—The Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Energy shall ensure that financial assistance provided to a State for any purpose with amounts made available under this subsection or in any legislation with respect to which paragraph (7) applies supplement, and do not replace, the amounts expended by the State for that purpose before the date of the enactment of the National Environment and Energy Development Act.”.

(b) ESTABLISHMENT OF STATE SEAWARD BOUNDARIES.—Section 4(a)(2)(A) of the Outer Continental Shelf Lands Act (43 U.S.C. 1333(a)(2)(A)) is amended in the first sentence by striking “, and the President” and all that follows through the end of the sentence and inserting the following: “. Such extended lines are deemed to be as indicated on the maps for each Outer Continental Shelf region entitled ‘Alaska OCS Region State Adjacent Zone and OCS Planning Areas’, ‘Pacific OCS Region State Adjacent Zones and OCS Planning Areas’, ‘Gulf of Mexico OCS Region State Adjacent Zones and OCS Planning Areas’, and ‘Atlantic OCS Region State Adjacent Zones and OCS Planning Areas’, all of which are dated September 2005 and on file in the Office of the Director, Minerals Management Service. The preceding sentence shall not apply with respect to the treatment under section 105 of the Gulf of Mexico Energy Security Act of 2006 (title I of division C of Public Law 109-432) of qualified outer Continental Shelf revenues deposited and disbursed under subsection (a)(2) of that section.”.

#### SEC. 25. NATURAL GAS LEASING.

Section 8 of the Outer Continental Shelf Lands Act (43 U.S.C. 1337) is further amended by adding at the end the following subsection:

“(r) NATURAL GAS LEASING.—

“(1) IN GENERAL.—The Secretary may issue leases under this section that authorize development and production of natural gas and associated condensate in accordance with regulations promulgated under paragraph (2).

“(2) REGULATIONS.—Before issuing any lease under paragraph (1), the Secretary must promulgate regulations that—

“(A) define what constitutes natural gas, condensate, and oil;

“(B) establish the lessee’s rights and obligations regarding condensate produced in association with natural gas;

“(C) prescribe procedures and requirements that the lessee of a lease issued under this subsection must follow if the lessee discovers oil deposits in the course of exploration or development; and

“(D) establish such other requirements for natural gas leases as the Secretary considers appropriate.

“(3) APPLICATION OF OTHER LAWS.—All provisions of this Act or any other Federal law or regulations that apply to oil and natural gas leases for the Outer Continental Shelf shall apply to natural gas-only leases authorized under this subsection.

“(4) EXISTING LEASES.—At the request of the lessee of an oil and gas lease in effect under this section on the date of enactment of this subsection, and under the requirements prescribed in regulations promulgated under paragraph (2), the Secretary may restrict development under such a lease to natural gas and associated condensate.

“(5) OIL AND GAS LEASING PROGRAMS.—The Secretary may include provisions regarding issuance of natural gas leases in the outer Continental shelf leasing program that applies for the 5-year period beginning in 2007, notwithstanding any draft proposal for such program issued before the date of the enactment of this subsection.

“(6) PROHIBITIONS AND WITHDRAWALS FOR OIL NOT AFFECTED.—This subsection does not affect—

“(A) any prohibition on the expenditure of appropriated funds to conduct oil leasing or preleasing activities; and

“(B) any withdrawal of Federal submerged lands from leasing for exploration for, and development and production of, oil.”.

#### SEC. 26. POLICIES REGARDING BUYING AND BUILDING AMERICAN.

(a) INTENT OF CONGRESS.—It is the intent of the Congress that this title, among other things, result in a healthy and growing American industrial, manufacturing, transportation, and service sector employing the vast talents of America’s workforce to assist in the development of affordable energy from the Outer Continental Shelf. Moreover, the Congress intends to monitor the deployment of personnel and material in the Outer Continental Shelf to encourage the development of American technology and manufacturing to enable United States workers to benefit from this title by good jobs and careers, as well as the establishment of important industrial facilities to support expanded access to American resources.

(b) SAFEGUARD FOR EXTRAORDINARY ABILITY.—Section 30(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1356(a)) is amended in the matter preceding paragraph (1) by striking “regulations which” and inserting “regulations that shall be supplemental and complimentary with and under no circumstances a substitution for the provisions of the Constitution and laws of the United States extended to the subsoil and seabed of the outer Continental Shelf pursuant to section 24 of this Act, except insofar as such laws would otherwise apply to individuals who have extraordinary ability in the sciences, arts, education, or business, which has been demonstrated by sustained national or international acclaim, and that”.

H.R. 2537

OFFERED BY: MR. KIRK

AMENDMENT No. 7: Redesignate sections 9 and 10 of the bill as sections 10 and 11, respectively.

After section 8 of the bill, insert the following:

#### SEC. 9. TREATMENT OF MERCURY AS PATHOGEN INDICATOR.

Section 406 of the Federal Water Pollution Control Act (33 U.S.C. 1346) is amended by adding at the end the following:

“(j) TREATMENT OF MERCURY AS PATHOGEN INDICATOR.—For purposes of monitoring and notification programs under this section, mercury shall be treated as a pathogen indicator.”.

H.R. 2537

OFFERED BY: MR. FLAKE

AMENDMENT No. 8: Page 3, after line 8, insert the following:

(c) PROHIBITION ON EARMARKS.—None of the funds appropriated pursuant to section 406(i) of such Act (33 U.S.C. 1346(i)) may be used for a Congressional earmark as defined in clause 9(d) of rule XXI of the Rules of the House of Representatives.

H.R. 2537

OFFERED BY: MR. FLAKE

AMENDMENT No. 9: Page 3, line 7, strike “\$40,000,000” and insert “\$30,000,000”.

H.R. 2537

OFFERED BY: MR. FLAKE

AMENDMENT No. 10: Page 10, after line 23, insert the following:

#### SEC. 11. SENSE OF CONGRESS.

It is the Sense of Congress that—

(1) the program development and implementation grants program remain a formula-based grant program, and

(2) none of the funds appropriated pursuant to section 406(i) of such Act (33 U.S.C. 1346(i)) should be used for a Congressional earmark as defined in clause 9(d) of rule XXI of the Rules of the House of Representatives.

H.R. 2537

OFFERED BY: MS. RICHARDSON

AMENDMENT No. 11: At the end of the bill, add the following:

#### SEC. 11. NATIONAL LIST OF BEACHES.

Section 406(g)(3) of the Federal Water Pollution Control Act (33 U.S.C. 1346(g)(3)) is amended by striking “The Administrator” and all that follows through the period and inserting “Within 12 months after the date of the enactment of the Beach Protection Act of 2008, and biennially thereafter, the Administrator shall update the list described in paragraph (1).”.

H.R. 2537

OFFERED BY: MR. INSLEE

AMENDMENT No. 12: At the end of the bill, add the following:

#### SEC. 11. IMPACT OF CLIMATE CHANGE ON POLLUTION OF COASTAL RECREATION WATERS.

(a) STUDY.—The Administrator of the Environmental Protection Agency shall conduct a study on the long-term impact of climate change on pollution of coastal recreation waters.

(b) REPORT.—

(1) IN GENERAL.—Not later than one year after the date of enactment of this Act, the Administrator shall submit to Congress a report on the results of the study conducted under subsection (a).

(2) INFORMATION ON POTENTIAL CONTAMINANT IMPACTS.—The report shall include information on potential contaminant impacts on ground and surface water resources as well as ecosystem and public health in coastal communities.

(3) MONITORING.—The report shall address monitoring required to document and assess changing conditions of coastal water resources, recreational waters, and ecosystems and review the current ability to assess and forecast impacts associated with long-term change.

(4) FEDERAL ACTIONS.—The report shall highlight necessary Federal actions to help advance the availability of information and tools to assess and mitigate these effects in order to protect public and ecosystem health.

(5) CONSULTATION.—In developing the report, the Administrator shall work in consultation with agencies active in the development of the National Water Quality Monitoring Network and the implementation of the Ocean Research Priorities Plan and Implementation Strategy.

H.R. 2537

OFFERED BY: MR. BILBRAY

AMENDMENT No. 13: At the end of the bill, add the following:

#### SEC. 11. USE OF MOLECULAR DIAGNOSTICS FOR MONITORING AND ASSESSING COASTAL RECREATION WATERS.

(a) STUDY.—The Administrator of the Environmental Protection Agency shall conduct a study to assess the benefits of using molecular diagnostics for monitoring and assessing the quality of coastal recreation waters

adjacent to beaches and similar points of access that are used by the public.

(b) CONTENTS.—In conducting the study, the Administrator shall—

(1) to the extent practicable, evaluate the full range of available rapid testing methods, as defined by section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362), and methods that meet prescribed performance standards, including—

(A) the amplified nucleic acid assay method; and

(B) the indicator organisms enterococci and *E. coli*; and

(2) compare the use of molecular diagnostics to culture testing of same source water, including the time for obtaining results, accuracy of results, and future applicability.

(c) PARTNERSHIPS.—Notwithstanding chapter 63 of title 31, United States Code, the Administrator may award a grant or cooperative agreement to a public or private organi-

zation to assist the Administrator in carrying out the study.

(d) REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of this Act, the Administrator shall transmit to Congress a report on the results of the study.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.